(1)

Supreme Court, U.S.
FILED

00. 295 AUG 21 2000

No
OFFICE OF THE CLERK

In The

Supreme Court of The United States

October Term, 2000

Saadat A. Siddiqui, ***Pro se, Petitioner***

v.

Northern Telecom Inc., ***Respondent***

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

PETITION FOR WRIT OF CERTIORARI

SAADAT A. SIDDIQUI
Pro se **, Pettitioner**
8135 N, 35th Ave, Apt #1109,
Phoenix, AZ, 85051.
Ph: (602)589-5741

37PP

QUESTIONS PRESENTED

1. Whether direct evidence is required to establish a *prima facie* case of employment discrimination? What is the real test/criteria to decide which evidence is direct and which is not? Is direct evidence always stronger and/or more credible than indirect evidence?

2. Should the determination of a *prima facie* case be exclusively based on plaintiff's proffered facts or on a combined evaluation of both the plaintiff's facts and defendant's explanation for its actions? Whether the district court erred by considering the defense side in determining that the plaintiff has failed to make out a prima facie case?

3. An unsuspecting employee, who has been previously denied hiring before s/he determines that the employer's actions were discriminatory, brings an action of employment discrimination under Title VII. Whether it will be proper for the court to conclude that the employer is entitled to summary judgment as matter of law and it did not discriminate because it had refused employment to that employee before?

Under *McDonell Douglas* proof scheme, what is specifically required to show that the employer had knowledge of the employee's protected activities? Who should raise the knowledge question, employer or the court? Whether the court erred in raising the knowledge question, on its own initiative, and concluding that the employer had no knowledge of petitioner's protected activity that continued over a two-year period?

4. Actions speak louder than words. Whether like the offensive statements, reckless **actions** of an employer may establish its motive in employment discrimination cases?

5. Whether the district court erred in concluding that Petitioner failed to show the causal link between his protected activities and respondent's adverse actions as required under the *McDonell Douglas* scheme to make out a prima facie case of retaliation?

6. Whether it is proper to use a court's ruling on frivolous cases as precedence to dispose off good cases?

7. Whether it is proper for the court and for the defendant to first overly restrict the petitioner's discovery and then demand of the petitioner the evidence that would have been obtained if the discovery had been allowed?

8. Whether the court erred in partially dismissing petitioner's claims, on the grounds of an insignificant facial defect on the EEOC charge form, while discounting other factors that weigh heavily against such a dismissal?

9. Whether employer–employee communication, face-to- face and over the media used for conducting daily business, is hearsay? Whether the court has erred in treating a recorded recollection of such a communication as hearsay?

10. Whether the law allows an employer to fish for damaging information from its former employee's current employer in order to build a defense in a Title VII action brought by the grieved ex-employee? Whether in a deposition held without a judge, a deposed party may be ordered to disclose irrelevant information and answer all deposition questions without any objection else face serious consequences? Whether it is proper to issue an Order citing secondary reasons because the main reason of the motion is impermissible by law?

11. What level of misrepresentation, if any, is permissible in pleadings? Whether the court erred in

rebuking plaintiff instead of sanctioning the defendant and/or its counsel for its deliberate and repeated misrepresentations, brought to court's attention by the plaintiff?

12. Respondent's business is located is in Wake County and that is where 90% of prospect witnesses reside. Whether the district court erred in assigning the case to a location 100 miles away from the proper VENUE? Whether the court also erred in ruling on summary judgment motion prior to dealing with petitioner's objection on improper venue?

13. In our justice system and administrative regulations there is a statue of limitation or time-bar for every thing. An employee is usually time-barred from making claims or conduct discovery. Whether the employer has any time-bar at all as to what it can bring into the defense?

14. Whether the Court of Appeals for the Fourth Circuit erred in affirming the district court and not publishing its opinion?

Whether sufficient evidence exists that, in modern days, summary judgment is often applied aggressively and inconsistently in employment discrimination actions brought by individuals against their employers? Particularly when the employer is a major corporation and the individual is a minority without resources to bear the excessively high cost of litigation? And whether abolishing the unbalanced summary judgment process is warranted to reduce the case load of this Court and that of appellate courts, and to enhance the cause of justice as legislated by the Congress to protect **all** specially the most vulnerable members of our society?

LIST OF PARTIES

The parties to this action are:

1) Saadat A. Ssiddiqui, a resident of Phoenix, Arizona.

   Mr. Siddiqui is not a corporate entity. Accordingly Rule 29.6 is not applicable to this Petition.

2) NORTHERN TELECOM INC., located in RTP, North Carolina.

3) Frank Pelouze Ward Jr., Attorney for Respondent/Appellee/Defendant, NTI.

TABLE OF CONTENTS

QUESTIONS PRESENTED i
LIST OF PARTIES iv
TABLE OF CONTENTS v
TABLE OF AUTHORITIES vi
OPINION BELOW 1
JURISDICTION 2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3
STATEMENT OF THE CASE 4
REASONS FOR GRANTING THE CERTIORARI 17

1) Certiorari should be granted to answer all the questions raised and review this case for major deviations from the norm, inconsistencies, conflicts, and plain errors in granting the summary judgment in favor of defendant. 17

2) Certiorari should be granted to determine whether the district court's conclusion that Siddiqui failed to establish causal connection is inconsistent with court's other findings in the case and is inconsistent and in conflict with other courts in the nation. The district court has decided this case against the guide lines it set for itself and has presented very dangerous and irrational legal theories. Despite clear evidence of causal connection, Court has rejected that evidence by applying some questionable concepts in a questionable manner and performing a jury function. 20

3) Certiorari should be granted to determine whether the partial dismissal of Siddiqui's case under the given circumstance was a clear error and not in the interest of justice. 25

CONCLUSION 29
APPENDIX (see separate volume) 31

TABLE OF AUTHORITIES

Cases

Alphonse v. Northern telecom, Inc.. 776 F. Supp. 1075, 1080 (E.D.N.C. 1991) ---------- 26
ANGOTTI v. KENYON & KENYON, 929 F. Supp . 651 (S.D.N.Y. 1996) ---------- 28
Cheek v. Eastern and Southern life Ins. Co., 31 F.3d 497, 500 (7th Cir. 1994 ---------- 26
Dowe v. Total Action Against Poverty In Roanoke Valley, 145 F.3d 653 (4th Cir, 1989)---------- 21, 22
Evans v. Technologies Applications & Serve. Co., 80 F.3d 954, 926-63 (4th Cir. 1996) ---------- 26
First Union national Bank, 155 F.3 435, 442 (4th Cir. 1998) ---------- 21
Karpel v. Inova Health System Services, 134 F.3d 1222 (4th Cir. 1998)---------- 21
King v. Seaboard Coastline R.R. Co., 538 F2d 581, 583 (4th cir. 1976) ---------- 26
Lynn v. eaconess Med. Ctr.-West Campus, 160 F.3d 484, 486-87 (8th Cir. 1998)). ---------- 29
McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). 20
McNairn v. Sullivan, 929 F.2d 974, 980 (4th Cir. 1991)--- 21
Reeding v. Arthur J. Gallagher and Co., 164 F.3d 1151, 1156 (8th Cir. 1999) ---------- 29
Reeves v. Sanderson Plumbing products, Inc ---------- 29
SOSA v. HIRAOKA, 920 F.2d 1451 (9th Cir. 1990). ----- 28
Tinsley v. First Union National Bank, 155 F.3 435, 442 (4th Cir. 1998)---------- 20
William v. Cerberonics, Inc., 871 F.2d 452, 457 (4th Cir. 1989) ---------- 21

Statutes

28 U.S.C. § 1291---------- 3
42 U.S.C. §§ 2000e et seq. ---------- 3

PETITION FOR WRIT OF CERTIORARI

The petitioner Saadat A. Siddiqui respectfully petitions this Court for a writ of certiorari to review the judgments, orders, and opinions of the courts below, the United States Court of Appeals for the Fourth Circuit and the District Court of Eastern District of North Carolina, Western Division. This petition is accompanied by a separate Appendix volume.

OPINION BELOW

The court of appeals did not publish its opinion. A copy of its MANDATE, its Order denying rehearing and rehearing en banc, and its unpublished opinion are provided as Appendices A, B, and C respectively in the accompanying separate Appendix volume.

Ten out of the twenty-nine orders of the district court were set on appeal to Fourth Circuit court. A copy of each of these orders along with eight more are provided in Appendix D through Appendix T.

The district court's judgment is Appendix D. Its order granting summary judgment to defendant, mooting Siddiqui's motions to allow proper VENUE, and to extend time for providing the witness list is at Appendix E. The next Order at Appendix F denies Siddiqui's following motions, motion to compel discovery, motion to subpoena defendant's employees, motion to confirm jury trial, and the motion to reconsider the denied extension of discovery end date; but allows extension to respond to summary judgment because **defendant needed four months (115 days to be exact) beyond the reset schedule to respond to discovery**. Appendix G is the order denying reconsideration of partial dismissal under F.R.P. 60(b). Appendix H is the order denying reply to defendant's response to plaintiff's motion

to compel discovery. Appendix I is the order allowing defendant out of time filing of its responses to plaintiff's motions to subpoena defendant's employees and the motion for relief from partial dismissal under F.R.P. 60(b). Appendix J is the order allowing defendant out of time filing of its overdue Statement of Objections. Appendix K is the order denying Siddiqui's opposition to **allowing defendant repeatedly out of time filing for no good cause**. Appendix L is the order allowing defendant time to respond to Siddiqui's motion to compel, motions to subpoena, and motion for relief from partial dismissal. Appendix M is the order extending time for dispositive motions **on defendant's request**. Appendix N is the order allowing Siddiqui to amend a preceding motion, but denying reconsideration of prior order that set the end date for discovery. Appendix O is the order denying Siddiqui's first request to extend discovery end date. Appendix P is the order denying Siddiqui's request to reconsider partial dismissal order and mooting two motions – reject defendant's objections to extend discovery and allow submitting corrections to a memorandum. Appendix Q is the order allowing defendant extension to respond to plaintiff's motion to reconsider partial dismissal order. Appendix R is the Clerk's Order reprimanding Siddiqui for reading the word "file" in context of the word "mail" on the motion. Appendix S is the order allowing Siddiqui extension to request reconsideration of partial dismissal order. Appendix T is the order partially dismissing defendants all claims except retaliation.

JURISDICTION

The unpublished opinion of the Fourth Circuit court was entered on December 8, 1999. See Appendix C. The Fourth Circuit denied hearing and rehearing en banc on March 20,

2000. See Appendix B. The Jurisdiction in Fourth Circuit was under 28 U.S.C. § 1291.

On July 3, 2000, this Court extended the time to file Petition for a writ of certiorari to and including August 20, 2000. Under 28 U.S.C. § 1254, this Court has jurisdiction to review the decisions of the Fourth Circuit and the decisions of the district court that were appealed to Fourth Circuit.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq*.

An employer may not discriminate against an employee "because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a).

Sec. 2000a. Prohibition against discrimination or segregation in places of public accommodation

- (a) Equal access

All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

STATEMENT OF THE CASE

By an order dated May 11, 1998, the United States District Court of Eastern District of North Carolina, Western Division, dismissed plaintiff's ("petitioner", "Siddiqui") claims of race, sex, age, religion, and national origin discrimination for lack of subject matter jurisdiction. The court held that these claims were not included in the scope of petitioner's April 1996 EEOC charge. The remaining claim of retaliatory discrimination was left before the court for further disposition.

By order of May 20, 1999, the district court granted summary judgment in favor of defendant ("respondent", NTI), holding that "Siddiqui has failed to establish the *prima facie* case of discriminatory retaliation." However, the court concluded, "NTI did not like Siddiqui, did not trust him, told others not to hire him, and said he would never be hired at NTI."

Petitioner filed a timely appeal in the Court of Appeals for the Fourth Circuit. The court of appeals affirmed the summary judgment per curiam and did not publish any opinion. The court of appeals further denied Petitioner's timely filed motion for rehearing and rehearing en banc; again without any explanation.

FACTS

Because of the procedural history of the case, no published opinion by court of appeals, inadequate explanation in district court's orders, this petition needs to set forth some background necessary for understanding this case specially the non-discriminatory reasons proffered by NTI. Court's patience and kindness is respectfully requested and Siddiqui offers his gratitude in return.

The facts below will show the Court how **recklessly and continuously** over a long period NTI has discriminated against Siddiqui and the jury has not been called in as yet.

Respondent, Northern Telecom Inc., ("NTI", "BNR"[1], "appellee", or "defendant") is a global corporation in the telecommunication industry with annual revenue of over $12.85 billion US dollars and over 75,000 employees worldwide. Its largest presence in the US, employing about 8,000 people, is in Research Triangle Park (RTP), North Carolina.

In July 1984, NTI hired petitioner, Saadat Siddiqui, as a senior engineer to design and develop the software for its digital switching systems (DMS-10, DMS-100, etc.). Siddiqui was highly qualified for that line of work – with two Master degrees and 5 years of work experience at major telecommunication companies like ITT and Harris RF Communications Inc. Also between 1978 and 1980, Siddiqui taught undergraduate classes as an adjunct faculty member at F.I.T. Melbourne, Florida.

In 1985, along with his workgroup, Siddiqui was transferred to BNR (Bell Northern Research - NTI's research and development subsidiary). This transfer did not finalize until May 1986 due to obvious feud and tussles between NTI and the young BNR management of Canadian origin. Unfortunately, the older members of the transferred group paid the price of becoming BNR employee.

a) Layoff

In April 1989, Siddiqui was laid off with verbal and written assurances of being rehired[2] shortly. According to

---

[1] BNR merged with NTI on December 31, 1997. So, NTI & BNR are used interchangeably.

[2] "Internal assistance will be provided through Career Development, your contact is John Dowd (Ext. 7209). External assistance will be

NTI, "this layoff was due to budget cuts and no layoff policy was followed because none existed then." However, one could not avoid noticing the impermissible discriminatory nature of the operation as the majority of those laid off were over 40. In Siddiqui's own group a much younger person with almost no experience was retained on board.

Siddiqui served BNR well and produced top quality software. Siddiqui left BNR in good standing on friendly terms with a reciprocal promise to serve it again in the future. In an exit letter, David Wilhelm, Siddiqui's last NTI manager wrote "Saadat Siddiqui worked for me from February 8, 1988, through March 24, 1989. During our association, I found him to be a loyal and conscientious employee." Also, plaintiff had a very positive exit interview with the NTI Director of Human Resources. The Court ordered NTI to provide copies of exit interviews. See Appendix F, p. 19. NTI declined misstating[3] deliberately "NTI affirmatively states that plaintiff did not have an exit interview in 1989." NTI's supplemental answer to interrogatory 7.

b) Employment Denied Before Filing EEOC Charges.

In 1991, Siddiqui started pursuing employment with NTI directly and/or through third party contractors. Because of his qualifications, experience, and being a perfect match for NTI jobs, Siddiqui was usually the first pick of almost all the consulting companies which were helping NTI to fill its wildly growing number of openings. Initially, nothing much happened. First, because NTI has just begun rebounding from its years of decline and second, Siddiqui was not after it completely. Shortly after, Siddiqui began an aggressive

---

provided to you through Right Associates in Raleigh at 4601 Six Forks Road. Your contact at Right is Jay Stahl, 848-2285."

[3] NTI's pleading are replete with misstatements. A judicial notice is warranted.

effort. A brief description of a few of the numerous unsuccessful job attempts as on record is reproduced below to facilitate a deeper understanding of the case and how many times NTI **recklessly** discriminated against Siddiqui.

- ❖ In June 1993, at a Job Fair held in Marriott Hotel of Raleigh, NC, Siddiqui had very favorable interview with a new NTI manager of a new department. This job search ended in an unsuccessful phone chase to contact that manager.

- ❖ Also in June 1993, Siddiqui had a meeting with Mr. Abdul Khawar, NTI's Vice President and a Pakistani, who, stating the common national-origin, showed fear and shied away from entertaining the employment issue presented to him

- ❖ In June 1994, IIC's manager Sam Dees[4], a friend, compared Siddiqui's qualifications and experience against NTI's job openings and vowed to land him a job in no time. IIC presented papers to its NTI business contact and reported to Siddiqui that **embarrassing remarks** received have annulled any hopes for a job at NTI and, for that matter, at IIC. In a letter to IIC, Siddiqui suggested to open a communication channel to clear up the matter. It was not welcome and rejected with more despise. See Appendix vol., Appendix Y, p. 63.

- ❖ On August 3, 1994, against multiple open positions, NTI's manager Ms. Camino Andradi and her staff interviewed Siddiqui. She openly indicated her intentions to hire him either as a contractor or as a direct employee. Decision on this was postponed to allow another manager interview Siddiqui for a higher priority

---

[4] Mr. Sam Dees used to be Siddiqui's collegue. He knew that Siddiqui was nominated for a Regional Peak Performance Award of Nynax Corp., for saving its subsidiary's business with IBM.

opening which is described in the next bullet.

❖ On August 9, 1994, against multiple open positions, NTI's manager Cathleen Cassady and her staff interviewed Siddiqui. She wanted to hire him on the spot, but could not because her manager was out of town. This job and the one before ended as described in the next bullet.

❖ On August 15, 1994, Siddiqui's new prospect employer CDI notified him that "NTI just called, an offer is in the works." A few hours later, it was cancelled and NTI had also volunteered lots of negative career destroying remarks ("Siddiqui is not re-hirable") and more.

❖ On October 20, 1994, against three open positions, Siddiqui had an unforgettable interview with NTI's manager Mike Sutton and his staff. He was not allowed to take Siddiqui to his office inside the building, so he held the interview in the main lobby for four hours. Despite this odd scene, Mike promised to make an offer and see about this bizarre situation while bidding farewell at the end of the interview. Siddiqui followed up, Mike avoided, and the whole thing ended in silence. Later, Siddiqui learnt that a white young female was hired.

NOTE: Before describing more jobs refused, it is appropriate to describe facts around the above humiliation and unlawful violation of Siddiqui's constitutional rights to Equal Access.
42 U.S.C. Sec. 2000a.

---

c) NTI's Undisputed Scandalous Plot To Hide a Long History of Discrimination

Until it happened on Oct 20, 1994, Siddiqui could not imagine such a thing happening to him. Investigation into these drastic events revealed that a scandalous plot was conjured up on or before August 15, 1994, when NTI's Cathleen Cassady called CDI with intent to make an offer. This triggered some activity between NTI and Sam Dees (IIC). The next day, August 16, 1994, at 10:00 a.m., Siddiqui received a call from Mr. Dees accusing him of impersonating as IIC employee to get into BNR and threatening to file suit. He also mentioned BNR's security log as evidence for his accusations. The questions here are **who told Sam** that Siddiqui was being interviewed and who was involved in this plot?

Noting that Mr. Dees referred to BNR's security log as evidence, Siddiqui called BNR's security asking for a copy of the August 9 log sheet. See Appendix Z, p. 65. As Siddiqui was receiving the log sheet from security personnel, Roscoe Judd appeared from the interior of the building and snatched the paper from Siddiqui while questioning his presence. Siddiqui tried to calm the irrational Roscoe Judd but, when he found that impossible, he ended up grabbing his paper and exiting the building along with his nine-year-old daughter. Once again, the question is **who informed Roscoe** and who asked him to intercept Siddiqui in the lobby?

Siddiqui **complained** to NTI's facility manager, Mr. Wriggleworth, about Roscoe's harassing and unwarranted ugly behavior. Only to learn ten days later that he had been permanently "banned from entering any NTI building". This ban is enforced even today. Because of this ban Siddiqui has not gone to any NTI facility since that day, except twice; (1) to see Mr. Donovan, NTI's VP HR., and (2) to attend the GRAND OPEN HOUSE JOB FAIR at BNR in April 1996.

NTI has called its scandalous scheme, *Supra*, as Siddiqui's Unlawful Entry onto NTI premises and has since

madly used it in all its responses to EEOC inquiries, and in all its pleadings below as its non-discriminatory reason for adverse employment actions. According to records, EEOC's entire investigation was no more than one phone call to each party for each of the four charges and EEOC took one and a half year for one phone call. EEOC and the courts below concur with NTI. In view of the above undisputed facts, this concurrence warrants this Court's supervisory intervention to ensure "EQUAL JUSTICE FOR ALL".

d) First Two EEOC Charges Are Filed (Nov 22, & Dec 2, 1994)

After facing humiliation, harassment, unlawful deprivation of rights, continuous disparate treatment, defamation, blacklisting, *Supra*, the accompanying emotional stress and the economical hardship for two years, Siddiqui went to EEOC to file charges. According to the intake questionnaire on record, dated October 18, 1994, Siddiqui marked boxes for "race", "age", "sex", "religion", "national origin", and "other" discrimination. EEOC filed that charge against IIC (not NTI) for "age" discrimination only. Siddiqui had to struggle very hard to make EEOC file against NTI as is evident in Siddiqui's verbal arguments and letters exchanged with EEOC. On December 2, 1994 a charge against NTI was filed, at last. Again EEOC allowed only age, race, and national origin claims. These two EEOC charges cover all the jobs, *Supra*, and more[5] that fell within the 180-day time-bar to file. EEOC **dismissed** the two charges on **March 25, and April 9, 1996**; just 15 days apart.

e) Employment Denied After The First Two EEOC Charges

❖ December 4, 1994, three categories of multi-openings advertised in News & Observer, Raleigh, N.C. Three

[5] A detailed list of all jobs will be filed with the BRIEF.

resumes mailed, one for each category including the ENTRY-level positions. NTI did not even send the automated courtesy acknowledgment. NTI filled these positions.

❖ April 17, 1995, Southeast High Tech Career Job Fair. At NTI's stall, Siddiqui gave his resume to and discussed multiple relevant job openings with Ron Tsang, oriental, who worked with Siddiqui at BNR. Ron never returned any calls regarding the (estimated) 15 relevant openings at Richardson Texas, most of which Siddiqui qualified for. Also, NTI never replied Siddiqui's follow-up letter mailed on October 10, 1995. NTI filled these positions.

❖ July 28, 95, a consulting company named CTG interviewed Siddiqui and submitted his papers to NTI for contract jobs. Mr. Walt Kennedy, sales manager; and Mr. Jim Powell, resource manager, practically offered the job verbally and submitted papers to NTI.

❖ September 27, 1995, Monarch submitted Siddiqui's papers against two contract positions at NTI requiring minimum five years experience in DMS family of switches. NTI filled these positions.

❖ October 4, 1995, Dan Smith of Kelly Services submitted Siddiqui's papers to NTI against multiple contract positions.

f) The Third EEOC Charge is Filed (October 31, 1995) (First two charges still pending)

The above unlawful refusals to hire compelled Siddiqui to file the third charge on October 31, 1995. After listening to Siddiqui's story for all the above jobs, EEOC's charge intaker chose to charge NTI for "retaliation" only.

On the Charge Questioner form, Siddiqui wrote "**retaliation**", "**age**", "**national origin**", and implied "**religion**", "**sex**" in a subsequent statement. Siddiqui had a long argument with EEOC about including these claims. On November 7, 1995 Siddiqui's **file** was transferred from Raleigh, NC to Charlotte, NC. Ron Tsang of NTI was identified as witness. Records received from EEOC do not show that EEOC contacted him in any way. This charge was **dismissed** on **May 13, 1996**, just one month after the second charge.

g) Employment Denied After The Third EEOC Charge

❖ On December 12, 1995, Dataskills & Siddiqui signed a binding employment contract. Dataskills referred Siddiqui to Northern Telecom. On January 5, 1996, NTI told Dataskills that Siddiqui "is not eligible for rehire." Dataskills withdrew contract and blacklisted Siddiqui permanently.

❖ On January 5, 1996, NTI gave a highly negative reference to Cutler Williams who liked Siddiqui and wanted to offer. The negative job reference was so strong that the company blacklisted Siddiqui for all its jobs.

❖ On January 31, 1996, NTI again gave very strong bad references to another employer COMSYS who was desperate for Siddiqui but ended up blacklisting him.

❖ On March 18, 1996, Siddiqui directly applied with NTI for two positions advertised in the N&O dated March 17, 1996.

❖ In March 1996, Siddiqui had a meeting with Mr. Bill Donovan, NTI's Human Resource Vice President. Discussion included, Siddiqui's excellent credentials, his

superb performance at last employer , Dataskills contract cancellation and NTI's current job openings. A couple of times, Mr. Donovan stepped out of the meeting and returned using a different tone. His behavior ranged from very nice to very ugly. From his statements and demeanor one could notice that he had full knowledge of all EEOC charges, alleged unlawful entry, and an entire history of Siddiqui's employment, as one should expect of a good HR VP. As a follow up, Siddiqui wrote and called him. Finally, Mr. Donovan called to inform, "a meeting consisting of himself, Mr. Khawar, and other mangers has decided to **never offer you a job**." For the first time NTI has told Siddiqui its stance on employing him. Mr. Donovan refused to give a transcript of this decision. (Note: This meeting was made possible by the good offices of Mr. Chandran, the new NTI president and an Indian. His arrival had shaken NTI, RTP, with new marching orders to lead the industry.)

h) Fourth EEOC Charge is Filed (April 2, 1996) (Last two charges still pending)

On March 12, 1996, Siddiqui had partly filled his intake questionnaire when an EEOC's charge intaker became ready to talk. So intake questionnaire was not filled completely. Ultimately a charge of "retaliation" was filed on April 12, 1996. On this charge EEOC also marked the "CONTINUING ACTION" box explaining that this connects the current charge to all the previous actions as those are under investigation simultaneously. Also it avoids claiming charges repetitively and eliminates the need. In good faith, Siddiqui believed this logical explanation without any doubt that is why Siddiqui did not write to EEOC to add other claims. Moreover, Siddiqui was just plain tired of dealing with EEOC. However, a form labeled, Resume of Inquiry, completed by EEOC counselor KAR on Feb 23, 96, states "PCP believes he was denied hire because of his **age** and possible **retaliation** for having filed several

charges against Northern Telecom." The letter also shows date of incident as Jan 5, 1996, the date at which **NTI has admitted to giving bad reference to Dataskills and other companies.**

I) Jobs Denied After the Fourth EEOC Charge

❖ April 14, 1996, Siddiqui attended NTI's Grand Open House Job Fair held in BNR building, RTP, NC. Siddiqui worked in this building but is now banned from ever stepping on its grounds. NTI had hundreds of openings; Siddiqui qualified for most of them. He signed in, passed on his resume, and spoke with some managers who showed a lot of interest in him. In vain, Siddiqui followed up with those managers as they used avoiding techniques. Many managers like Camino Andradi, Cathleen Cassady, Asif Khan, and some others who knew Siddiqui did their best to avoid eye contact. Siddiqui respected that.

❖ In an interrogatory about its hiring policy, NTI states "[Candidate's] resume is maintained for active consideration for 180 days." Therefore all qualified open positions up to October 15, 1996 are justifiably regarded as denied.

❖ Technically and logically, even NTI's current job openings are also jobs denied because of Siddiqui's lawful interest in them, while NTI's unlawful ban on access to its facilities and its blacklisting decisions make it **futile** to apply for them.

> NOTE: This petition has not listed all the jobs denied. Others include NTI's online announcements, word-of-mouth - internal and external referrals, jobs at NTI's competitors like Alcatel, Fujuitsu, Tekelec, SAS, consulting company's jobs, and the

government jobs that Siddiqui lost as a direct result of NTI's giving out bad references.

I) Dismissal of the Fourth EEOC Charge (Jan 21, 1997)

A few days before dismissing this charge, EEOC presented NTI's offer of a favorable recommendation letter to withdraw the charge. Siddiqui declined and asked to reconsider this offer in the light of enormous irreparable loss NTI has caused him for no reason. NTI did not respond and EEOC dismissed the charge on Jan 21, 1997.

In its dismissal letter EEOC writes:

> "The evidence obtained by the commission indicates that Respondent did not give out bad references on you, as alleged. The evidence reveals that you were a former employee who voluntarily left the company with a grant of severance pay when your performance was rated at a sub-standard level. Subsequently, Respondent became aware that you used dishonest methods to gain entry to its premises; **thereafter, you were deemed to be unsuitable for rehire.** The evidence fails to show there was a violation of Title VII or that retaliation occurred."……
>
> ……
>
> S/ Priscilla Stevens, Investigator.

Basically, similar text is reiterated in all dismissal letters. Interestingly enough, EEOC is exonerating NTI from giving out bad references while **NTI admits** it did so multiple times. Like NTI, EEOC also describes the performance ratings in its own invented terms, such as sub-standard - not even an option on the evaluation form - to make it look questionable. According to the record

Siddiqui's last two ratings were "**satisfactory contributor,**" (range 3+ to 3-) as shown below.

Siddiqui's Performance – September 9, 1988
s/ David Wilhelm:

"The next 4 months performance on DTC Performance Characterization was good. The Test Plan and Participation was satisfactory. The Analysis and Report was excellent.
He has increased communication with manager to a better level."

Performance summary statement						
5 ☐	4 ☐	3+ ☐	3 ✕	3- ☐	2 ☐	1 ☐

Siddiqui's Performance – December 23, 1988
s/ David Wilhelm

Superior contributor		Satisfactory contributor			Insufficent contributor	
5 ☐	4 ☐	3+ ☐	3 ☐	3- ✕	2 ☐	1 ☐

Also record shows that the "insufficient contributor" rating of 1987, NTI's proffered reason for denying employment in 1996 was actually "satisfactory contributor." After Siddiqui objected to it as low and unfair rating, it was further lowered to 2, "Insufficient contributor."

These subjective **evaluation** by young, inexperienced and biased **management** does in no way reflects Siddiqui true skills and capabilities. Siddiqui has much better record of performance before joining BNR and after leaving BNR. Moreover, the other undeniable fact is that like woman who

are paid 75% of what men are paid, the non-preferred minorities are rated at 75% or less of their actual performance.

Also, EEOC clarifies that Siddiqui became "ineligible for rehire" after what NTI calls "Unlawful Entry", otherwise Siddiqui was "eligible for rehire." This corroborates with Kristen Shamblins' (BNR HR) August 18, 1994 personnel phone report "Siddiqui is eligible for rehire."

REASONS FOR GRANTING THE CERTIORARI

1) **Certiorari should be granted to answer all the questions raised and review this case for major deviations from the norm, inconsistencies, conflicts, and plain errors in granting the summary judgment in favor of defendant.**

Since the court of appeals affirmed the decision without providing even a single sentence of explanation, Siddiqui assumes that its position in every respect is identical to that of the district court. Hence, in this petition and arguments, district court is used to mean both the district court and the court of appeals.

Summary judgment should not be granted if disputed issues of material facts exist. As in Anderson v. Liberty Lobby, Inc., 477 U.S. 242,247 (1986), " Only disputes between parties over facts that might affect the outcome of the case properly preclude the entry of summary judgment."

At worst, in this case NTI and Siddiqui have a non compromising dispute on two issues - performance and the unlawful entry, raised by NTI. Each of these issues will impact the outcome of the case. Therefore, summary

judgment is improper, and the case should be tried in front of a jury.

On the other hand, plaintiff has provided sufficient direct evidence to reverse the summary judgment with severe sanctions for fraudulent defense. This evidence at least includes the following:

Direct Evidence Sufficient to reverse summary judgment

Performance Issue:

i) According to the undisputed records referred under FACT, *Supra*, Siddiqui's performance was good when he was laid off. In fact he was promised to be called for re-employment.

ii) The performance rating in question is very subjective thing and it should be treated accordingly.

iii) NTI did not conduct the requested inquiry into the 1987 rating which was lowered from 3- to 2 when Siddiqui did not consider 3- as fair evaluation of his work.

iv) Siddiqui has a super performance record in his professional life before and after BNR/NTI.

v) NTI's issue with performance has no merit. In fact it is frivolous defense which should be rejected and sanctioned like any frivolous claim would be.

Now on to the second issue that NTI has heavily counted on as a sure wining strategy.

Unlawful Entry Issue:

Siddiqui asked NTI if he has ever done any thing unethical and NTI has any record of it. Given below is the actual request for production and NTI's answer.

Request 8:

"Any document that has any true record of any wrong and unethical act on part of the plaintiff."

Answer:

> "NTI objects to this Request on the grounds that it is overly broad, burdensome, vague, irrelevant, and seeks information that is privileged. NTI further objects to this Request to the extent that it seeks information pertaining to employees other than those in the Research Triangle Park, North Carolina, facility, where plaintiff worked during the times relevant to this lawsuit. Without waiving the foregoing objections and the general objection set forth above and incorporated herein by reference, **NTI states that there are no such documents.** (emphasis added)"

First, NTI's objection is worth noting. This is how NTI answered the entire discovery. NTI has no record of any wrong doing ever by Siddiqui, but it has filled pages and pages of pleadings to prove that Siddiqui committed unethical, and to be precise, criminal acts that rendered him permanently unfit for employment with NTI. To accomplish this, NTI has tried hiding behind Sam Dees or behind good faith beliefs. NTI cannot hide behind anything because it has deliberately taken that position in the three EEOC charges despite Siddiqui's continuous showing of evidence disproving that position.

The second direct evidence that no unlawful entry ever occurred is the copy of August 9, 1994 page from BNR's visitor log. See Appendix Z. This shows that on that day Siddiqui was invited by Cathleen Cassady for interview set by CDI and that NTI's accusation is nothing but **fraud.**

The district court has seen all of the above evidence.

NTI's entire defense is only the above two issues. In view of what is presented so far, **NTI has absolutely no defense**. No jury in the world will concur with NTI or the district court. Siddiqui could not find another example in employment case law where summary judgment is granted on purely fraudulent defense. **Hence, district court's position in this case is unique and it warrants this court's thorough review and actions to prevent this from happening again to another victim of discrimination.**

Now the question for this court is to determine how this direct evidence was ignored both by the district court and by court of appeals on review?

2) Certiorari should be granted to determine whether the district court's conclusion that Siddiqui failed to establish causal connection is inconsistent with court's other findings in the case and is inconsistent and in conflict with other courts in the nation. The district court has decided this case against the guide lines it set for itself and has presented very dangerous and irrational legal theories. Despite clear evidence of causal connection, Court has rejected that evidence by applying some questionable concepts in a questionable manner and performing a jury function.

The district court applied the proof scheme of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). See court's order at Appendix E. Also, the court cited *Tinsley v. First Union National Bank*, 155 F.3 435, 442 (4th Cir. 1998) as an example of application of *McDonnell Douglas* to prove *prima facie case* of retaliation.

According to *Tinsley*, "Normally, very little evidence of a causal connection is required to establish a *prima facie*

case." *First Union national Bank*, 155 F.3 435, 442 (4th Cir. 1998) (citing *Karpel v. Inova Health System Services*, 134 F.3d 1222 (4th Cir. 1998)). See e.g., *McNairn v. Sullivan*, 929 F.2d 974, 980 (4th Cir. 1991)**(Plaintiff stated prima facie case even though there was no evidence of causal connection other than the fact that plaintiff was fired after bringing a lawsuit)**. *Karpel*. (emphasis added). The court of appeals has held that "merely the closeness in time between filing of a discrimination charge and an employer's firing an employee is sufficient to make a prima facie case of causality." *See William v. Cerberonics, Inc.*, 871 F.2d 452, 457 (4th Cir. 1989).

To reject Siddiqui's prima facie, Court relies on a highly distinguishable case, *Dowe v. Total Action Against Poverty In Roanoke Valley*, 145 F.3d 653 (4th Cir, 1989). The court's decision in that case is sound but it cannot be applied on every retaliation case. The court has erred in applying Dowe on the instant case. In fact this is an example where a precedence set in frivolous cases or appeals becomes a major headache for *pro se* plaintiffs as the corporate lawyers abuse it and the Courts go along with them.

Dowe is very different from Siddiqui. On appeal, *Dowe* conceded that her initial charge of race discrimination was without merit. In *Dowe*, one adverse action of termination occurred three years after EEOC dismissed the case. In *Siddiqui*, adverse actions of denying employment occurred when three EEOC charges were under investigation. In *Dowe* only one adverse action was claimed. In Siddiqui, repeated and countless actions occurred and all of them are undisputed. In *Dowe*, employment continued for the next three years past the protected activity. In *Siddiqui*, employment was refused despite promises to rehire. In *Dowe*, employer offered lots of accommodations to keep the employee. In *Siddiqui*, employer created a trap to finish the employee. Dowe has a very questionable record. Siddiqui is

frequently recognized for his skills to tame difficult tasks. *Siddiqui's* employer has lied. *Dowe's* employer has been very people sensitive. *Dowe* has admitted that she was not retaliated against. To a fair jury, Siddiqui can prove that his is a case of continuous discrimination, disparate treatment and retaliation. *Dowe* has conceded that her supervisor did not know. *Siddiqui's* employer has not stated that it did not know, and it cannot for fear of perjury if the trial is held. That is the motive to avoid trial at all cost. *Dowe's* employer conducted many inquiries before taking any adverse action. Siddiqui's employer has refused inquiry and refused to give in writing what it did not and does not hesitate passing out verbally.

Also the district court has misquoted *Dowe* that "a plaintiff who alleges retaliation establishes that the prospective employer had the knowledge of the protected activity." *Dowe* only identifies the need to establish that the employer had the knowledge. Because it can be established in many ways, *Dowe* does not put that responsibility explicitly on the plaintiff as the district court has applied in the instant case. *Dowe's* language is copied here for comparison.

> "To satisfy the third element [causal connection] the employer must have taken the adverse employment action because the plaintiff engaged in a protected activity. Since, by definition, an employer cannot take action because of a factor of which it is unaware, the employers knowledge that the plaintiff engaged in a protected activity is absolutely necessary to establish the third element of a prima facie case.

Siddiqui agrees that an innocent employer must not be punished for running its business fairly and squarely. If NTI was innocent, Siddiqui would not have brought this action.

In the instant case NTI has never stated plainly that it did not know of Siddiqui's protected activity. So it is established that NTI knew and the Plaintiff need not reestablish that. When Siddiqui pointed that out on appeal, NTI repeated its rhetoric, but again avoided stating clearly whether it had the knowledge or not. Instead NTI tried to hide behind court's finding which is based on its rhetoric. NTI also refers to its Answer at Second Defense, Sixth Defense, sec, 8-12. None of these states that NTI did not know of Siddiqui's protected activity when it took adverse actions against him months after months and years after years. NTI's Answer has nothing about the knowledge question and can not be abused to prove what is never stated. Otherwise, no pleadings other than the complaint and answer be required in an action.

From the facts presented in this petition, a fact-finder can see that NTI cannot deny what it knew fully. If it did and the trial is held, it runs the risk of perjury. Although, NTI has already taken that risk once, in its scandalous plot to accuse Siddiqui of unlawful entry. In its pleadings, NTI has argued that EEOC charge or exhausting administrative remedies triggers lot of interaction between the employer and the employee. This should also create a lot of activity within the company and hence many key people in the company have to know, otherwise a single angel can not resolve such a dispute.

No jury can believe that a VP of human resources is not informed of EEOC charges pending against its company. And company has one angel who hides all these problems from rest of the company. Before believing this one would have to believe in the tooth fairy.

District court has also seriously erred in stating that Siddiqui alleges only one event that was discriminatory. The facts, *Supra* prove that. NTI itself has admitted two more events of giving out bad references and the court has reviewed that. The only difference between Dataskills and

all others is one paper - the written contract. Because of that proof Dataskills event is the only one that the district court has considered and not the others, even though sufficient circumstantial evidence exists to include all the events from October 2 ,1995 that are covered under the last charge filed, on April 2 1996. And that is lots of events and jobs.

By conducting the entire hiring on phone and leaving no written evidence in employees hand, employers have found a way to break the anti-discrimination laws safely and freely. The question therefore for this Court is what can be done to protect the victims when they are rendered totally helpless and their interests are not protected by any law.

The District court seems to not regard the Dataskills contract as admissible evidence, which is more than sufficient for prima facie.

In rejecting Siddiqui's prima facie, District court has considered the employment denials prior to EEOC filing as the employers license to discriminate freely. If this kind of precedence is set , then employer can only be sued for first violation. If that is missed, the employer is home free from then on. To avoid litigation, Siddiqui, showed lots of patience and tolerance. In a civilized society that must be appreciated, not punished.

From the time line of facts, S*upra*, it is evident the Dataskills, Cutler Williams, retaliations occurred only 65 days after the third EEOC charge and the COMSYS retaliation occurred 90 days after the EEOC filing. District court seems to imply that these events are not linked in time with the protected active because the time elapsed is more than 45 days. This theory provides the employer with the easiest way to frustrate all the anti-retaliation laws simply by waiting 45 days before taking an adverse action. After that employer is home free to violate any anti-discrimination law.

District court also points out that Siddiqui forecasts no evidence from deposition or affidavit to support his factual contentions. It absolutely does not lead to the conclusion drawn there is not enough evidence to survive summary judgment. All the evidence was in NTI control and the district court concurred with NTI that nothing is at all discoverable. Siddiqui does not know that under such circumstances he could get any further with deposition. Siddiqui believes the burden proof should lie on the party where it is easy to find the evidence.

This being the very first encounter of Siddiqui with any law, Siddiqui could not manage the case like a professional. Still Siddiqui kept pace with most of the things but fell short in conducting deposition for the following reasons.

1) First taking depositions was totally beyond Siddiqui's means.

2) Considering all factors, conducting the deposition would have been **futile.**

3) The only chance to get any facts out is during the trail. When Siddiqui could have some control to get the facts out.

4) Although, Siddiqui obtained Subpoenas with an intension to depose and or get a written deposition. But despite the best intention Siddiqui just could not handle the work load created by this case and his ignorance with the law.

3) Certiorari should be granted to determine whether the partial dismissal of Siddiqui's case under the given circumstance was a clear error and not in the interest of justice.

The district court dismissed siddiqui's claim of sex, age, race, religion, and national origin on the grounds that

corresponding boxes were not marked on the EEOC charge form under which this action is filed. See Appendix T. In court's view if the boxes are not marked, the administrative remedies are not exhausted and there is no exception to this rule or considerations that may waive this requirement. In the instant case, Court has taken such a rigid position that even if a record of EEOC investigations is produced for a cause that is not marked, the court will still dismiss that claim. Such an extreme application is completely against the purpose and intent of this Administrative requirement.

Siddiqui has no dispute with the covenants "that the scope of a plaintiff's complaint is defined and limited by the allegations contained in his EEOC charges. *Evans v. Technologies Applications & Serve. Co.*, 80 F.3d 954, 926-63 (4th Cir. 1996); *King v. Seaboard Coastline R.R. Co.*, 538 F2d 581, 583 (4th cir. 1976); *Alphonse v. Northern telecom, Inc.*, 776 F. Supp. 1075, 1080 (E.D.N.C. 1991). "This rule serves the dual purpose of affording the EEOC and the employer an opportunity to settle the dispute through conference, conciliation, and persuasion, and of giving the employer[r] some warning of the conduct about which the employee is grieved." *Cheek v. Eastern and Southern life Ins. Co.*, 31 F.3d 497, 500 (7th Cir. 1994)(citation omitted). "[A]llowing a complaint to encompass allegations outside the ambit of the predicate EEOC charge would frustrate the EEOC's investigatory and conciliatory role, as well as deprive the charged party of notice of the charged."*Id.* Only those discriminations claims stated in the initial charge, those reasonably related to the original complaint, and those developed by reasonable investigation of the original complaint may be maintained in a law suit." *Evans.* "[T]he scope of the charge rule requires that any claim alleged in a civil complaint be reasonably expected to follow from the EEOC charge." *Alphonse*, 776 F Supp. At 1080 (emphasis added).

If Siddiqui's EEOC three charges satisfy the above requirements than neither NTI nor Court should have any objection to allow them by reversing the wrongly dismissed claims.

The charge of December 2, 1994, alleged age, race, and national-origin claims. It served all the above requirements. While this was pending, another charge alleging retaliation on the charge form but showing intent to claim age, retaliation, religion and sex on the application was filed on October 31, 1995. Like the earlier charge served all the above requirements contemporaneously. Then the last charge claiming retaliation and **continued action** marked on the form and EEOC's telephonic inquiry indicating intent to claim age and retaliation was filed on April 2, 1996. Like the previous two charges, it also served all the requirements contemporaneously. Now the three charges are pending. NTI had all papers it needed to do its part that is try to settle the dispute. Did NTI do that? The answer is obvious "NO". Why so? NTI knows. Most probably, rather decisively, because Siddiqui was no body to NTI. He was just a foreign born non- preferred citizen. The question is did NTI treat other white plaintiff's the same? Again the answer is "NO". According to an answer to a discovery NTI settled claims with them out of court.

The fact that charges were scattered on three EEOC forms and arrived separately a short period apart does not reverse the requirement these three have already fulfilled.

These charges were dismissed on April 9, 1996, May 13, 1996, and January 21, 1997. It would have been impossible for Siddiqui to file and prosecute three different cases simultaneously. Ultimately these cases would have been merged into one case. This shows that it is only fair to allow Siddiqui all his claims.

Other factors that need to be consider include evidence of EEOC's control and errors, a continuous chain of adverse employment actions over a long period against a

single person, Siddiqui's intent to include all claim, and the case law precedences.

Two cases which can be called really identical to the plaintiff's case not only facially but in most of the facts, circumstances and law, are: *ANGOTTI v. KENYON & KENYON*, 929 F. Supp . 651 (S.D.N.Y. 1996) and *SOSA v. HIRAOKA*, 920 F.2d 1451 (9th Cir. 1990).

Angotti, an attorney herself, brought legal action of discrimination based on sex, disability and retaliation under Title VII. The defendant ,Kenyon & Kenyon moved to dismiss the plaintiff's charge of retaliation because of failure to exhaust administrative remedies. The plaintiff alleged that retaliation was not included on the charge because of wrong information given by the EEOC interviewer. The court denied defendant's motion.

Sosa, a community college professor, filed a charge of national origin discrimination with EEOC. Later he filed the legal action including defendant's discriminatory conducts that occurred much more than 180 days prior to filing with EEOC and also included other charges about acts of discrimination occurring after the EEOC has issued its letter of determination of charges. The United States District Court for the Eastern District of California, 714 F.Supp. 1100, Robert E Coyle, granted the defendant's motion to dismiss. Plaintiff appealed and the Court of Appeals, Tang , Circuit Judge, held that: " professor sufficiently alleged CONTINUING VIOLATION such that actions would not be dismissed as time barred"; and reversed the dismissal.

CONCLUSION

Most Courts are guided by the principle that summary judgment should **seldom** be granted in employment discrimination cases since the claims frequently rely on inferences. See R*eeding* v. *Arthur J. Gallagher and Co.*, 164 F.3d 1151, 1156 (8th Cir. 1999) (citing *Lynn v. eaconess Med.* Ctr.-West Campus, 160 F.3d 484, 486-87 (8th Cir. 1998)).

The courts decision and its findings are very inconsistent and suggest a serious error. The court states that it can *conclude* that NTI *did* not like Siddiqui, did not trust him, told others no to hire him and said he would never be hired at NTI. But the Court can not conclude that he has established a disputed issue of material factthat anyone at NTI discriminated against him because of EEOC charges he had previously filed

Whenever Siddiqui reads this order and observe the omissions, and the legal ideas introduced, he feels chilled. In this case more is at stake than just Siddiqui's personal interest in it. If it was just Siddiqi's interest, he would not come that far and put himself and his daughter life through such a torturous path of seeking justice. Siddiqui has very little capabilities to do justice with this case. In many ways this case has all the elements of Texaco, the Tobacco settlement but minus the crowd that creates the excitement and minus the lawyers who roar on court floor.

Whatever could go wrong in a case is very wrong in this case. From beginning to end it is full off flaws, inconsistencies, conflicts, unequal treatment in the court, unbalanced application law. This case provides the Court a better opportunity than *Reeves v. Sanderson Plumbing products, Inc.* to fix what is very wrong with the system. .

For all the important questions of law that directly affect the lives of millions, the foregoing facts, and for not so wellorchestrated arguments, the petition for writ of certiorari be granted

Repectfully Submitted.

Saadat A. Siddiqui
Pro se Petitioner,
8135 N. 35th Ave, Apt # 1109
Phoenix, AZ 85051.
Ph: (602) 589-5741

Date: August 20, 2000